

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

BARRY STANDRIDGE,

Plaintiff,

v.

COUNTY OF AMADOR,

Defendant.

No. 2:22-cv-1534 KJN P

ORDER AND FINDINGS &
RECOMMENDATIONS

Plaintiff is a county jail inmate, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983.

On January 23, 2023, plaintiff was ordered to file an opposition or a statement of non-opposition to the pending motion within thirty days. In that same order, plaintiff was advised of the requirements for filing an opposition to the pending motion and that failure to oppose such a motion would be deemed as consent to have the: (a) pending motion granted; (b) action dismissed for lack of prosecution; and (c) action dismissed based on plaintiff's failure to comply with these rules and a court order. Plaintiff was also informed that failure to file an opposition would result in a recommendation that this action be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

The thirty-day period expired and plaintiff did not respond to the court's order. On March 2, 2023, defendant filed a motion to dismiss this case based on plaintiff's failure to respond.

1 “Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss an
2 action for failure to comply with any order of the court.” Ferdik v. Bonzelet, 963 F.2d 1258,
3 1260 (9th Cir. 1992). “In determining whether to dismiss a case for failure to comply with a
4 court order the district court must weigh five factors including: ‘(1) the public’s interest in
5 expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of
6 prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits;
7 and (5) the availability of less drastic alternatives.’” Ferdik, 963 F.2d at 1260-61 (quoting
8 Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986)); see also Ghazali v. Moran, 46
9 F.3d 52, 53 (9th Cir. 1995).

10 In determining to recommend that this action be dismissed, the court considered the five
11 factors set forth in Ferdik. Here, as in Ferdik, the first two factors strongly support dismissal of
12 this action. The action has been pending since August 31, 2022, almost six months. Plaintiff’s
13 failure to comply with the Local Rules and the court’s January 23, 2023 order suggests that he
14 abandoned this action and that further time spent by the court thereon will consume scarce
15 judicial resources in addressing litigation which plaintiff demonstrates no intention to pursue.

16 Under the circumstances of this case, the third factor, prejudice to defendant from
17 plaintiff’s failure to oppose the motion, also favors dismissal. Plaintiff’s failure to oppose the
18 motion prevents defendant from addressing plaintiff’s substantive opposition, and delays
19 resolution of this action, thereby causing defendant to incur additional time and expense.

20 The fifth factor also favors dismissal. The court advised plaintiff of the requirements
21 under the Local Rules and granted ample additional time to oppose the pending motion, all to no
22 avail. The court finds no suitable alternative to dismissal of this action.

23 The fourth factor, public policy favoring disposition of cases on their merits, weighs
24 against dismissal of this action as a sanction. However, for the reasons set forth supra, the first,
25 second, third, and fifth factors strongly support dismissal. Under the circumstances of this case,
26 those factors outweigh the general public policy favoring disposition of cases on their merits. See
27 Ferdik, 963 F.2d at 1263.

28 IT IS HEREBY ORDERED that the Clerk of Court shall assign a district judge to this

1 case.

2 For the foregoing reasons, IT IS HEREBY RECOMMENDED that this action be
3 dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(b).

4 These findings and recommendations are submitted to the United States District Judge
5 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
6 after being served with these findings and recommendations, any party may file written
7 objections with the court and serve a copy on all parties. Such a document should be captioned
8 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
9 objections shall be filed and served within fourteen days after service of the objections. The
10 parties are advised that failure to file objections within the specified time may waive the right to
11 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

12 Dated: March 8, 2023

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14 KENDALL J. NEWMAN
15 UNITED STATES MAGISTRATE JUDGE
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